



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1998

Mr. Helmut (Hal) Talton
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR98-2609

Dear Mr. Talton:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119190.

The Department of Transportation (the "department") received a list of questions concerning an area at 10500 North Freeway, Interstate 35W. You responded to this inquiry by providing a copy of the road layout prior to construction and by informing the requestor that construction plans for on-going work in the area were available from the department's district office. After that information was provided to the requestor, on July 20, 1998, the department received a notice of claim concerning an accident at that site. Thereafter, on July 30, 1998, the department received a clarification of the original request, describing the specific information sought. You assert that section 552.103(a) protects this information from disclosure.¹

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex.App.--Austin 1997, no pet.), *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 at 2 (1990). We have reviewed your arguments, the submitted

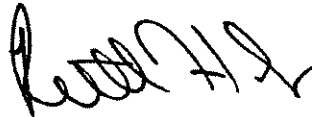
¹You indicate that you have informed the requestor that the department does not have information responsive to a portion of the request for records.

documents, and the correspondence provided, and conclude that you have shown the applicability of section 552.103 in this situation.

Thus, you may withhold the records for which you assert the section 552.103(a) exception. We note, however, that once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). You may withhold the records at issue that the opposing party to the anticipated litigation has not seen or had access to. The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 119190

Enclosures: Submitted documents

cc: Mr. Kerry Robinson
Robinson & Robinson
P.O. Box 101294
Fort Worth, Texas 76185
(w/o enclosures)